

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

CASE NO. 03-5417-3P7

MARY E. ZELL,

Debtor.

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**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

This Case is before the Court upon Creditor, Dr. Robert Nucci's, Application for Administrative Expense. After a hearing held on August 9, 2005, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On May 28, 2003, Debtor filed her Chapter 7 Bankruptcy Petition.
2. Dr. Robert Nucci is an orthopedic surgeon and medical provider to Debtor.
3. On May 3, 2003, Debtor was involved in a motor vehicle accident.
4. On October 27, 2004, Debtor sought medical treatment from Dr. Nucci.
5. All Dr. Nucci's services to Debtor were performed post-petition.
6. Dr. Nucci's medical services rendered to Debtor total \$7,380.70. The services rendered remain unpaid.
7. Dr. Nucci provided Debtor's attorney with treatment and medical reports to be used in conjunction with settling Debtor's personal injury claim.

8. Debtor's person injury claim was subsequently settled by the Chapter 7 Trustee for \$20,000.00.
9. Neither the Chapter 7 Trustee nor any creditor of Debtor's estate filed an objection to Dr. Nucci's Application for Administrative Expense.

CONCLUSIONS OF LAW

The issue before the Court is whether Dr. Nucci's services can be deemed to be an administrative expense pursuant to 11 U.S.C. § 503 (b). In pertinent part, 11 U.S.C. § 503(b)(1)(A), states:

- (b) After notice and a hearing, there shall be allowed administrative expenses... including
 - (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries or commissions for services rendered after the commencement of the case."

The Eleventh Circuit has interpreted § 503 (b)'s categories to be illustrative rather than exhaustive. In re Colortex Industries, Inc., 19 F.3d 1371, 1377 (11th Cir. 1994). In Colortex, the Eleventh Circuit stated, "[A]s is evident from the Code's 'Rules of Construction,' the use of the word 'including' is not intended to be limiting." Id., 11 U.S.C. § 102(3). The court also noted that the leading treatise on bankruptcy, Collier on Bankruptcy, supports an interpretation of § 503(b)'s categories as illustrative rather than exhaustive: "[W]hile it is true that the court is not free to fashion additional priorities it ought not to be assumed that the six designations are necessarily exclusive nor designed to cover every conceivable situation... The court might well conclude there are to be allowed as administrative expenses claims not necessarily precisely covered by the provisions of section 503(b)." 3 Collier on Bankruptcy, 503.03 at 503-17.

Dr. Nucci asserts that his post-petition medical services benefited the estate in that the treatment and medical reports provided by him aided the Chapter 7 Trustee in securing the \$20,000.00 settlement agreement for Debtor's personal injury claims.

In the instant case, neither the creditors of the estate nor the Chapter 7 Trustee have filed an objection to Dr. Nucci's Application for Administrative Expense. Since Dr. Nucci's post petition medical services have apparently benefited the estate and no objections have been filed, the Court will use its discretion and approve Dr. Nucci's administrative expense pursuant to 11 U.S.C. § 503(b).

CONCLUSION

Based upon the above, the Court approves Dr. Nucci's Application for Administrative Expense in the amount of \$7,380.70. A separate order will be entered in accordance with these Findings of Fact and Conclusions of Law.

Dated this 3 day of October, 2005 in Jacksonville, Florida.

/s/ George L. Proctor
George L. Proctor
United States Bankruptcy Judge

cc:
Debtor
Louis Bakkalapulo
Dr. Robert Nucci
Chapter 7 Trustee
All interested parties